

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:05CR38
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
LARRY PULLIAN,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR") in this case. The government adopted the PSR (Filing No. 30), and the Defendant objects to the PSR (Filing No. 31). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 28 because the Defendant did not receive a two-level downward adjustment for the safety valve. The Defendant's position is that he met all five prongs of U.S.S.G. § 5C1.2. This issue will be heard at sentencing. The Defendant bears the burden by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objection to the Revised PSR (Filing No. 31) will be heard at sentencing;
2. Otherwise, the parties are notified that my tentative findings are that the PSR is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 25th day of August, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge